

United States Senate

WASHINGTON, DC 20510

September 30, 2005

The Honorable Mike Johanns
United States Department of Agriculture
200-A Jamie L. Whitten Building
Washington, DC 20250

Dear Secretary Johanns:

As the original Senate co-sponsors of the Conservation Security Program (CSP), we are writing to comment on the amendments to the Interim Final Rule (IFR), published in the Federal Register on March 25, 2005. The Conservation Security Program is the most important innovation in conservation included in the 2002 farm bill, and promises greatly improved environmental performance on the working lands of our nation.

We are encouraged by the 2005 sign up and the enthusiasm producers have shown for the program – despite the problems discussed below. The amendment to the IFR made some significant improvements by moving the program in the direction of what was enacted in the farm bill. For example, the increased program flexibility allowing producers to extend their contracts and move from tier to tier over the course of a contract gives producers incentives to improve and expand their conservation efforts. Use of a pastured cropland rate will encourage grazing land enrollment. The elimination of the highly discriminatory contract limitation helps remove program bias. However, more must still be done to carry out a fully national CSP with adequate payments to compensate farmers and ranchers and attract enrollment. CSP should be easier for farmers and ranchers to use and more flexible. The considerable expansion represented by the 2005 sign up is quite positive. This program should now be further expanded, made more farmer-friendly and fully funded (i.e., no further funding limitations or caps) in the President's budget so it can operate as enacted: a program allowing continuous sign up, without regard to watershed, with reasonable rewards for participation.

General Concerns with the IFR

Initially, let us briefly reiterate our concerns about problems in earlier versions of the IFR that have not been remedied. The program excludes far too many producers from even applying to enroll in CSP, let alone signing a contract. On top of regulatory barriers, the payment rates are too low to reward producers adequately for their stewardship activities. The fundamental problems with the IFR – before and after the latest amendments – are that it distorts the practical reality of how farmers and ranchers conduct their operations in ways that frustrate those who want to do a better job conserving resources, picks winners and losers based on rigid schedules and interpretations of preferred practices rather than actual environmental performance, and even gives an incentive for agricultural producers to delay adoption of better conservation practices.

Many producers believe that the legislation that was enacted, if implemented, would offer tremendous opportunities to improve the environment, but that USDA's IFR and procedures for implementing CSP result in confusion and needless complexity that discourage many from even attempting to sign up. The NRCS is changing and in some cases reversing policy choices that were considered in Congress and written into the farm bill signed by the President. Actions like this are beyond the legitimate rulemaking authority of the NRCS, and should be reversed to achieve faithful implementation of CSP as enacted.

In developing the CSP, one of our concerns was to minimize prescriptive requirements on producers and instead to emphasize conservation planning and choice in achieving the quality criteria. The goal was to have conservation solutions geared to the needs of the locality involved tailored to the problems on the individual farm or ranch. Producers would be offered the opportunity to deal with a number of different resource conservation needs, and allowed to adopt solutions on part or all of their operations. Producers would receive payments for being good stewards of their land, and cost-share payments for adopting new practices. This flexible system would allow producers to enter CSP, even those with only basic conservation practices previously in place, and provide them the incentives to advance over the course of their CSP contract to achieve the resource management system and associated quality criteria for their operation's resource(s) of concern.

Unfortunately, the program as it is being carried out has little resemblance to the enacted CSP. Instead there are many wholly manufactured requirements not in the statute that limit producers from participating or even applying for the program.

The IFR Imposes Barriers to Participation

One primary barrier to participation is the watershed approach. This approach has denied most producers in the country the opportunity to even apply to participate in the program. It has also frustrated many in the initial years of CSP signups, who found that the inflexible standards prevented them from enrolling, and that the watershed rotation would prevent them from attempting to sign up again until long in the future.

USDA ignores both the statute and sound policy in setting strict preconditions for participation. By shutting out producers who do not meet these inflexible threshold practice requirements, the IFR shuts the door in the face of those who may need this program the most – and where the greatest potential for environmental gains exists. As a prime example, a farmer who fails to have a documented laboratory soil test from each of the last two years – which is beyond customary practice for most producers – is shut out of CSP. Because of the watershed rotation, that farmer will have to wait many years before having another opportunity to enter the program, just for not being prescient enough to meet the soil test requirements in advance. Moreover, shifting program preconditions make it even harder for farmers to know in advance what kinds of data and records they need to have available, and what practices are prerequisites to CSP eligibility.

Many producers may not have the capability to self-finance the implementation of some practices or structures that are now prerequisites to CSP enrollment. Rather than being closed out from even applying for the program, these producers should be given the opportunity to demonstrate and commit to significant improvement over the course of the CSP contract, with payment contingent on the improvement. Many of these preconditions are high standards, which CSP was intended to help meet by the end of the contract term, not as a precondition for even getting into the program.

For instance, managed rotational grazing programs should be encouraged but not treated as a precondition for entrance to Tier I. Under the Timing of Use provision, farmers and ranchers are required to have a planned rotational grazing program in place on their land as a precondition to CSP participation. We purposely emphasized the importance of managed rotational grazing systems by making them explicitly eligible for enhanced payments in the law. NRCS should implement the law by encouraging advanced grazing systems in CSP conservation plans with appropriate enhancement incentives, not by requiring the producer to have implemented such systems as a precondition of eligibility, nor by imposing rigid, unscientific prescriptions of what constitutes sound rotational grazing in a given state.

The Self-Assessment Checklist (PA-1770, June 2004) asks whether prospective CSP participants “keep written records or documentation of your pasture management activities for each field, such as grazing intensity, frequency, and duration of grazing periods, forage yields, livestock needs, soil analysis, and nutrients applied, including manure?” A “no” response indicates, according to the self-assessment, that the producer “may not be eligible for CSP at this time.” While that language seems to hold out the possibility that a producer could overcome one or more “no” responses to enroll in the program, this provision of the self-assessment discourages producers from even submitting an application. The limited data on sign-up made available does not indicate whether any applicants who had answered no on any questions went on to successfully apply for CSP. “At this time,” in light of the watershed approach, means “now or any time in the next 8 or more years.” While having these comprehensive written records is something to strive for, sound conservation objectives should not be corrupted into barriers for disqualifying producers from CSP, and thereby deterring conservation. We urge you to shift from a system of preconditions rigidly anchored to particular practices to an assessment of the existing conservation practices in place, with appropriate, aggressive, and performance-based goals and appropriate compensation for improvement over the course of the contracts.

The IFR Changes and Reverses Policy Choices Enacted in the Statute.

A primary example of the IFR reversing a decision made by Congress and signed into law is the series of reductions in compensation rates, such as the reductions in the stewardship payment for each tier. The statute provides that the tier I base payment is “an amount *equal* to 5 percent of the applicable base payment.” Yet the regulations allow a stewardship payment of just 1.25% at tier I. Different reductions apply to each tier. These reductions understandably reduce the willingness of producers to participate in CSP. For instance, in Iowa, the stewardship payment on grazing land is just \$1.25.

Even with an SCI of .4, enhancement payments for annual soil testing, use of split nitrogen application, and using records to manage forage, an Iowa farmer would receive a total payment of just \$13.20 per acre for pastured cropland. In comparison, the same acreage placed in the Conservation Reserve Program (CRP) would receive a payment of around \$97. Even with returns from production on the land, it is hard to see how producers could make as much grazing the land as from keeping it retired in the CRP or putting it entirely into row crop production. The regulatory reduction of the stewardship payment below the statutory requirement is unwarranted and improper and should be reversed.

The IFR Arbitrarily Picks Winners and Losers among Agricultural Producers.

The IFR arbitrarily picks winners and losers among agricultural producers – a goal that the CSP was expressly designed to avoid. For instance, Senator Harkin was recently approached by an organic farmer who was declared ineligible for CSP because he does not practice no-till planting. Since no-till generally relies on the use of herbicides and often upon GMO varieties resistant to these chemicals, organic farmers are typically not able to use this method. Yet, studies like the longitudinal field trial begun by the Research Institute of Organic Agriculture (FiBL) in Switzerland, and published in *Science* in May, 2002, show that organic practices result in outstanding soil quality, with high carbon levels. And for other producers, particularly of vegetables and other specialty crops, no widely-adapted, effective no-till production techniques presently exist. Hence, for a substantial array of specialized producers, the near mandatory no-till emphasis is a bar on their participation in CSP – again, contrary to the statute as enacted.

As we understand it, the problem results from the use of the Soil Conditioning Index as the sole measure of soil quality. This index is an important tool, and we encourage the use of objective measures to assess the conservation benefits of specific practices. But SCI is only one measure, and it is tremendously affected by any soil disturbance. Other measures, such as the Soil Management Assessment Framework developed at the ARS Soil Tilth Laboratory in Ames, IA, should also be used. We are encouraged that the amendment to the IFR states that NRCS is developing more performance-based indices for major resource concerns. To the maximum extent possible, these indices should measure actual performance rather than using models to predict outcomes based on limited data from specific types of agriculture. However, we also stress the problem is not just a lack of indices, but rather that NRCS is using the indices as a bar to participation, rather than to measure progress over the course of the contract.

The IFR should Focus on Results, Rather than Creating Barriers

Rather than setting inflexible requirements and threshold barriers based on particular “best practices,” USDA should be focused on the environmental results that a farmer enrolled in CSP achieves. Rather than issuing blanket, nationwide “resources of concern,” and focusing CSP on addressing these issues, the program should allow farmers and ranchers to address the key resource problems in their area and on their

individual farms. By setting program criteria that favor specific practices, crops, and regions, the IFR substitutes the policy judgment of NRCS for that of the elected representatives who write the laws and sign them into law.

The amendment to the Interim Final Rule creates a new provision that is unsupported by any statutory authority and (along with the watershed rotation approach) encourages producers to delay adopting conservation practices. The new variable enhancement payment rate purports to encourage farmers and ranchers to adopt new practices over the course of the contract, by requiring that existing practices be paid for at a rate that declines over the course of the contract, allowing, in the words of the Federal register notice at page 15206, “contract capacity to add additional enhancements in the out years.” Yet, while *existing* practices would be subject to this provision, new practices begun during the course of the contract would be paid at a level rate. The goal, apparently, is to ensure that unless the farmer or rancher expands the operation’s conservation enhancement practices, the farmer or rancher would see payments drop over the course of the contract. This process is reminiscent of the words of the Red Queen from Through the Looking Glass: “Now, here, you see, it takes all the running you can do, to keep in the same place.”

The result is that farmers seeking fair and reasonable payment under this program would be well advised to put off conservation activities (other than those necessary to meet the minimum eligibility criteria) until they have the opportunity to sign up under the watershed approach, so that if they get into CSP they can maintain level payments over the course of the contract. This provision is particularly unfair when it is paired with the excessively high preconditions for participation, since producers who self-finance conservation practices in order to meet the minimum criteria would see their enhancement payments for those practices diminish over time. This variable enhancement payment provision shows that USDA failed to grasp the purpose of paying for existing practices – to ensure that producers will not lose CSP payments for being good stewards and adopting practices before CSP funding is available.

The Conservation Security Program has not been properly implemented, in large part because the regulations have been seemingly written purposely to thwart CSP’s appeal to producers and its success – in addition to the administration’s policy of consistently advocating CSP funding caps and advocating the use of the CSP as the bank to pay for unrelated government expenses. However, there is still the opportunity for this program to be revived and implemented in accord with the original intent. We urge you to direct the Department to create regulations that would allow the CSP to achieve its full potential to improve conservation on working lands across and throughout our nation.

Sincerely,



Senator Tom Harkin



Senator Gordon Smith